

Engineering Statement

in Support of an Opposition to a Petition to Deny

prepared for

Shellee F. Davis

This statement has been prepared on behalf of Shellee F. Davis ("Davis"), applicant for a proposed new FM station to serve Westerville, Ohio in support of her opposition of to the Petition to Deny her pending application filed by Ohio Radio Associates, Inc. ("ORA").

ORA argues that the treatment of the Westerville allotment as being "grandfathered" under Section 73.213 of the Rules and Regulations of the Federal Communications Commission ("FCC Rules") is inappropriate. However, FCC Rules and applicable precedent do allow such treatment. Davis disputes ORA's assertions in a companion legal pleading, which this Statement supports in part.

Allotment Criteria

ORA claims that their and one other applicant's proposed sites are essentially fully spaced under the (present) provisions of §73.207 and that Davis, being short-spaced in one direction under §73.207, should therefore be dismissed.

The Davis proposal does not meet the requirements of §73.207 for 6 kW Class A stations toward WTTF-FM but does, in fact, satisfy §73.213 in that direction and §73.207 in all other directions. Consideration of the Davis proposal in this manner is appropriate in that the former licensee of the Westerville facility caused notification to be made to Canada to permit the use of the then existing site as a 6 kW Class A operation,¹ and the domestic separation criteria of §73.207 have been satisfied in all directions save one, that being toward WTTF-FM, Tiffin, Ohio.

¹ The FCC's FM engineering database shows that the then existing WBBY facility was notified to Canada as Class B1 on April 16, 1990 and subsequently accepted as such by Canada on March 5, 1991.

The treatment of the Davis proposal under §73.213 is appropriate in that the Westerville allotment was proposed prior to October 2, 1989. The Westerville reference point (which is also the specified Davis site) met the separation requirements of Section 73.207 as it existed prior to October 2, 1989. It became short-spaced to WTTF-FM by virtue of that rule change and has remained so since that time. Accordingly, this site remains fully-spaced under §73.213 with respect to WTTF-FM. Davis thus proposed a 3 kW operation at the allotment reference point, radiating 3 kW (at 100 meters) toward WTTF-FM (as if it were only a 3 kW allotment/station under §73.213). Section 73.213(c) reads in part "New stations on channel allotments made by order granting petitions to amend the Table of FM Allotments which were filed prior to October 2, 1989, may be authorized in accordance with paragraph (c)(1) or (c)(2) of this section." Davis has thus filed under the provisions of paragraph (c)(1) of §73.213.

Secondly, this allotment itself could not be allotted under the now existing "6 kW" rules as this channel (Channel 280A) would not meet the FM Allocation Branch's criteria for allotment. Specifically, at the allocation stage, a proposed allotment must not only meet the separation requirements of §73.207,² but also the community coverage requirement of Section 73.315 of the FCC Rules. As a matter of policy, when the FM Allocations Branch considers a new allotment, the issue of principal community coverage can be treated only in a general way (unless a specific site has been designated by a petitioner) since specific transmitter sites can exhibit unique coverage characteristics. Where a specified site has not been identified, either the community reference point, or the closest arbitrary point that is not short-spaced, is checked for satisfaction of the community coverage criteria, a uniform

² Proposed allotments are evaluated based on minimum distance separations between the center of the specified community of allotment, or a (usually arbitrary) reference point located near that community, and (a) licensed, authorized, or proposed stations and (b) other communities at which allotments have been made but do not yet have proposed uses. Distances are computed and evaluated for assignments and allotments made on the same frequency as that which is proposed to be allotted and for those operating on the first, second, and third adjacent channels, along with those FM channels 10.7 MHz above or below the proposed channel. If the computed distances exceed the minimum requirements of §73.207, and there is no conflict with any other timely-filed allotment proposal, the frequency desired (or a non-conflicting substitute selected by the FCC staff) is allotted to the specified community.

"typical coverage radius" circle being drawn about the reference point. If the community is encompassed by the circle, the coverage criteria are assumed to be able to be met from some "real site". An exception to this policy is made in cases where a specified site is proposed and demonstration of coverage is provided (proving that unique conditions exist which provide the requisite coverage). The 80% community coverage policy is not employable at this stage. Here, no fully spaced site exists which could serve 100% of the community of license.

Regarding the ORA site, in particular, which is just fully spaced by virtue of the "rounding provisions" of the rules, 100% coverage of the community of Westerville is not attainable from the generalized uniform circle method or by the direct application of the standard prediction methods of the rules. This is acknowledged by ORA itself, in that representations had to be made invoking the 80% criteria with respect to substantial compliance with the community coverage provision of the rules.

Thus, since no site is available which would completely satisfy all of the allotment criteria, the Westerville allotment is a case wherein which no fully spaced site exists under the present rules for allocation purposes and that, if proposed today, the Channel 280A allotment could not be made to Westerville.

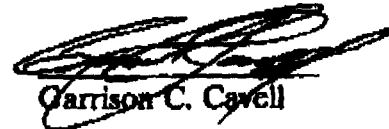
It then follows that any site which satisfies 100% of the community coverage criteria would necessarily be short-spaced under the present provisions of §73.207. The Davis site satisfies the provisions of Sections 73.207 in all directions save one, the provisions of Section 73.213 in that direction, and provides 100% coverage of the community of Westerville.

Therefore, Channel 280A can only be considered as a "3 kW" allotment available under the provisions of Section 73.213(c)(1) of the FCC Rules. The Davis application should thus not be dismissed for being "short-spaced" (or not proposed for a "fully spaced site") because Davis meets all appropriate criteria of the FCC's Rules and Policies.

Certification

I hereby state under penalty of perjury that I am a principal in the engineering firm of Lahm, Suffa & Cavell, Inc., regularly engaged in the preparation of technical studies and exhibits submitted to the Commission, that my qualifications are a matter of record with that agency, that this statement was prepared by myself or under my direction, and that all statements contained herein are true and correct to the best of my knowledge and belief, and as to information provided by others, I believe them to be true.

April 8, 1992



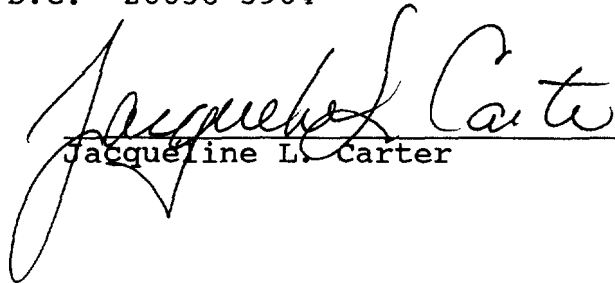
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Certificate of Service

I, Jacqueline L. Carter, hereby certify that I have, this 8th day of April, 1992, caused to be sent by U.S. first-class mail, postage-prepaid, a true and correct copy of the foregoing "OPPOSITION OF PETITION TO DENY" to the following:

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Jacqueline L. Carter